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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,612	07/16/2003	Vincent De Laforcade	05725.1226-00000	6532

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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
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WASHINGTON, DC 20001-4413

EXAMINER
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DOAN, ROBYN KIEU

ART UNIT	PAPER NUMBER
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3732

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/19/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/619,612	<b>Applicant(s)</b> DE LAFORCADE ET AL.	
	<b>Examiner</b> Robyn Doan	<b>Art Unit</b> 3732	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 1/5/07.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-110 is/are pending in the application.
- 4a) Of the above claim(s) 24-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 and 39-110 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-6, 9-23, 39, 40, 42-44, 47-63, 65, 68-110 are rejected under 35 U.S.C. 103(a) as being unpatentable over Di Vito (U. S. Pat. # 3,101,086) in view of Simpson (U. S. Pat. # 1,686,936).

With regard to claims 1, 2, 4-6, 11-17, 39, 40, 42, 44, 49-55, 62, 63, 65, 70-77, 84-86, 91-106, Di Vito discloses a single piece applicator nozzle (20) comprising attachment portion (18) configured to attached the nozzle to a receptacle (10) containing a product, an arrangement of a plurality of teeth (24) disposed in at least one row (fig. 1) comprising first and second end teeth (22), at least one of the teeth (24) defining a channel (fig. 1) being configured to be placed in flow communication with product contained in the receptacle, the channel opening on an exterior of the at least one tooth (fig. 1). Di Vito also discloses the end teeth (22) being solid devoid of outlet apertures (col. 1, lines 51-52). Di Vito does not disclose the channel opening on an external lateral surface of at least one tooth via at least one outlet aperture facing in a direction of at least one adjacent tooth, wherein the outlet aperture opens into a groove which has a first end into which the at least one outlet aperture opens and a second end

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located substantially at a free extremity of the at least one tooth. Simpson discloses an applicator nozzle device (2) comprising an arrangement of teeth (18), at least one of the teeth defining a channel (17, fig. 2) in flow communication with product, the channel opening on an exterior of the at least one tooth via at least one outlet aperture (19), wherein the outlet aperture opens into a groove (fig. 3) which has a first end into which the at least one outlet aperture opens and a second end located substantially at a free extremity of the at least one tooth (see figs. 1, 2). Simpson shows the outlet aperture (19) facing the front sides of the teeth. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the tooth with the outlet aperture and the groove configuration as taught by Simpson into the hollow tooth of Di Vito in order to provide maximum strength and ability to penetrate hair of the user. And it would have been obvious to one having an ordinary skill in the art at the time the invention was made to position the outlet aperture of Simpson facing substantially in a direction of at least one adjacent tooth, since it has been held that rearranging location of parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70. With regard to the limitations "the arrangement is formed by a single molded piece", Applicant is noted all the claimed structures have been shown, how the arrangement being formed is not given patentable weight in an article claim. Di Vito in view of Simpson disclose the arrangement being configured so as to present an obstacle to product flowing from at least one outlet aperture beyond the first and second end teeth. In regard to claims 9-10, 18-23, 47-48, 56-61, 68-69, 78-83, 87-90 and 107-110, Di Vito shows the attachment portion comprising screw threading configured to engage with

screw threading on a neck (16, fig. 1) of the receptacle (col. 1, lines 47-49, fig. 1). Di Vito further discloses a receptacle (10) being in a form of a deformable tube (resilient col. 1, lines 42-43) and the product contained within the receptacle being a hair product (col. 1, lines 57-59).

Claims 3, 7-8, 41, 45-46, 64, 66-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Di Vito in view of Simpson as applied to claims 1, 39 and 62 above, and further in view of Smith (U.S. Pat. # 1,180,199).

With regard to claims 3, 7-8, 41, 45-46, 64, 66-67, Di Vito in view of Simpson disclose an applicator nozzle in combination with a receptacle comprising all the claimed limitations as discussed above except for the channel opening on the exterior of the at least one tooth via two outlet apertures facing in opposite directions and the location of the outlet aperture being proximate a free extremity of the at least one tooth. Smith discloses fountain comb (fig. 3) comprising a plurality of teeth (3), each tooth having a channel (4) opening on the exterior of the tooth via two outlet apertures (5, fig. 3) facing in opposite direction and the location of the outlet aperture (5) being proximate a free extremity of at least one tooth (fig. 3). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the two outlet apertures as taught by Smith into the teeth of Di Vito in view of Simpson for the purpose of distributing the hair product to the hair of the user evenly.

Applicant has argued that rearranging the position of the outlet apertures of Simpson device would materially alter the overall operation of Simpson device and the

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outlets 19 of Simpson would not be able to remove dandruff from the scalp; this is not true because Simpson does not teach that rearranging the location of the outlets would cause the device not be able to perform well or the device would only work with the disclosed position of the outlets, therefore, it is proper to rearrange the location of the outlets.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Robyn Doan